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IN THE

Supreme Court of the United States

April Term, 1970.

No. 247

ST. MICHAEL AND ARCHANGEL RUSSIAN ORTHODOX GREEK CATHOLIC CHURCH, a Pennsylvania Corporation, VERY REVEREND ALEXANDER FEDORONKO and PAUL MURIANKA,

Petitioners,

vs.

PETER UHNIAT, JOHN SIDORSKY, JOHN PERAMUS, JR., WILLIAM YURKOW, PAUL KACZMARCZIK, JOHN HARWAN, WILLIAM YUSCHAK, ANDREW SHAST, JOHN PATRICK, BORIS SMARKOLA, EUGENE PAUL, THOMAS MELNICK, HARRY J. BRONSKY, JOHN LAHOVIN, WASYL PYRZ and ANDREW COSS,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania.

Petition for Rehearing

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Respondents.

PETITION FOR REHEARING

Petitioners respectfully present their Petition for a rehearing and in support thereof show:

GROUNDS FOR REHEARING

As but limitedly suggested in the 8th Reason for granting the Writ set forth on page 16 of our Petition for Certiorari, after the Supreme Court of Pennsylvania rendered its Decision on 11 November 1969, and *since* the filing of our Petition for Certiorari, the Bishops Synod of the Russian Orthodox Greek Catholic Church of America (referred to as the *Metropolia*), formally received on May 18th, 1970 a document called a *Tomos* from the Patriarchate.

It was dated April 10, 1970. The same Bishops Synod on October 20, 1970, at St. Tikhons Monastery Church, South Canaan, Pennsylvania (as foreseen and approved in the *Tomos* and an earlier Agreement) proclaimed the Metropolia's autocephaly; that same Bishops Synod, and Church, now have had ceded to them, by the Patriarchate (with certain stipulated exceptions as to enumerated clergy, properties and parishes), exclusive "spiritual and temporal jurisdiction" in America without any question as to their continuous authority as a valid hierarchy.

In this way the true Orthodoxy of the Bishops of the Metropolia, including His Grace Archbishop Kiprian, Bishop of Philadelphia and Pennsylvania, the Diocesan in whose care and concern the parish of St. Michael's existed during the within litigation has been confirmed, and is beyond question.

Thus it has become clear that the Pennsylvania Supreme Court misconstrued not only the Patriarchate's hierarchical *release* and *consent* of the parish in 1955 by which St. Michael's received Very Reverend Alexander Federonko as

its priest—who by Orthodox Canons was the Representative on the parish of an Orthodox hierarch, but also makes clear that by ignoring *all* facts after the Charter of 1915—including the fact of release and *consent* of the hierarchy comprehended within that Charter, *to* the hierarchy now conceded to be the proper continuity of *that* Orthodox Church and hierarchy in America. The Court ignored valid decisions of the highest tribunals.

Thus, both *Gonzalez v. Archbishop*, 280 U. S. 1 (1929); and *Presbyterian Church in the U. S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 89 S. Ct. 601 (1969), have been misconstrued and misapplied.

So too, when Justice Eagen, writing for the Court, referred *only* to a 1962 oral statement of the pastor (page 152, Appendix) that St. Michael's was *within* the Metropolia, in failing to give attention to the 1955 *consent* and release by the Patriarchate (Conclusions of Law 10 and 11, page 104 Appendix, Finding of Fact 79, page 101 Appendix); or of Exhibit PC-64 (Transcript page 3601a, Finding of Fact 81, Conclusion of Law 13—Appendix pages 56, and 105-106); and Conclusions of Law 19, 20, 22 and 23 (pages 109-111 Appendix)*; the Court erred.

The recent *Tomos, Agreement* and *Proclamation* of 1970 have made clear that under Orthodox hierarchical principles St. Michael's *was* within the Metropolia hierarchy (Conclusions 98, 99 (pages 112-113 Appendix)) and thus no *transfer* of property could result, or resulted, from the Lower Court's Adjudication which the Pennsylvania Supreme Court reversed under misapprehension of the *Gonzalez* and the *Hull* Decisions.

For reasons that do not appear in its Opinion, the Supreme Court completely overlooked the fact (Finding 96,

* See also our References, on pages 8 and 10, of the Petition for Certiorari.

page 102 Appendix) that Appellees for all of 1963 (the first year of litigation) contended they were *independent* and without a hierarchy. In error, Justice Eagen wrote that Appellees "claimed" Patriarchal jurisdiction; but they asserted and claimed *autonomy* and *no* hierarchy *at all* until the Spring of 1964!

Thus, Appellants have not had their "day in Court" and will not *unless* this rehearing is allowed.

Nor, unless Certiorari is allowed on this Petition for Rehearing, will Appellants have had fair and proper application of the true legal principles of separation of Church and State, and the benefit of the guarantees of the First and Fourteenth Amendments of the U. S. Constitution.

Indeed, as pointed out in Reasons numbered 5 and 7 for granting Certiorari (page 16) the Pennsylvania Supreme Court failed to give Appellants due process *and* to accord equal protection of the laws when on the *very day* it rendered its decision in the instant case *without* referring to any fact, history, or the decision of highest ecclesiastical authority to which the matter had been carried, the Pennsylvania Court declared *St. John's* Church of Pittsburgh to be within the hierarchy of the *Roman* Catholic Church, *despite* the language of the Charter of Incorporation which established the Church as "autonomic".

In Pennsylvania, by these two Decisions, *Roman* Catholic hierarchs are accorded judicial reviews *beyond* civil charters (*St. John Chrysostom Greek Catholic Church of Pittsburgh v. Elko*, 436 Pa. 243); but *Orthodox* Catholic Churches (as the instant case) are held to deserve only a *mere* perusal of the language of an old Charter (that is, the 1915 Articles of Incorporation) without reference to hierarchies. This is hardly "equal protection" under law.

Now that the two hierarchies have acted and consented on certain *All-America* Ecclesiastical rights and jurisdiction (just as they did *in 1955* for St. Michael's of Philadelphia) unless dependence on consents, cessions and releases

can be assured under law, there is a possibility and danger of further and extensive litigations, whereas allowance of Certiorari here and now will assure a just Review, a clarification of the nature and extent of judicial acceptance of hierarchical decisions, and bring a harmonization in Pennsylvania of the true application of the principles of *Watson* and of *Hull*.

Respectfully submitted,

IVAN MICHAELSON CZAP,
Attorney for Petitioners.

CERTIFICATE OF COUNSEL

I, IVAN MICHAELSON CZAP, Appellant's Counsel, hereby certify that the foregoing Petition for Rehearing is presented in good faith, not for delay, and is restricted to the grounds specified.

IVAN MICHAELSON CZAP.